United Nations

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 783

Case No. 860: Abado

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 10 May 1995, Salim Abado, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA), filed an application in which he requested the Tribunal, *inter alia*:

"...

3. To rescind the decision dated 13 February 1995 of the Director of Administration and Human Resources, constituting the Respondent's final decision to reject (implicitly) the claim submitted by the Applicant on 13 October 1994, and to draw all the legal inferences therefrom; in particular, to order the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to pay to the Applicant the termination indemnity provided for in rule 109.9 of the applicable Staff Rules;

4. To award the Applicant an indemnity equal to six months' salary for the moral injury that he has suffered;

5. To award the Applicant, as expenses, a sum payable by the Respondent, to be determined at the end of the proceedings."

Whereas the Respondent filed his answer on 15 May 1996;

Whereas the Applicant filed written observations on 26 September 1996;

Whereas, on 21 October 1996, the presiding member of the panel decided that there would be no oral proceedings;

Whereas, on 1 November 1996, the Tribunal posed two questions in writing to the Respondent, to which he provided answers on 7 November 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 November 1974 as a messenger with a category "Z" appointment. On 1 April 1975, his appointment was converted to a temporary indefinite appointment (Area staff). On 14 February 1994, the Applicant wrote to the Director of Administration and Human Resources, requesting special leave without pay for six months "in view of compelling personal and family reasons". In a letter dated 21 February 1994, the Director of Administration and Human Resources granted the Applicant six months' leave without pay, effective 1 April 1994. The letter contained the following stipulation:

> "Should you not advise the Agency before 1 September 1994 that you wish to return to duty after the end of the authorized period of special leave, i.e., on 1 October 1994, your resignation will be given effect as from 30 September 1994.
>
> Please sign one copy of this letter and return it to Personnel Officer (Area)."

The Applicant signed the letter on 22 February 1994.

On 5 July 1994, the Secretary-General decided to transfer UNRWA headquarters to the Gaza Strip. On 18 July 1994, staff members were informed that this transfer "could mean a loss of career, unemployment and hardship", but that staff members who decided not to move to Gaza would be offered "a fair and acceptable compensation package". On 24 October 1994, the Commissioner-General informed all UNRWA headquarters Vienna staff that they would be declared provisionally redundant with effect from 1 November 1994. A termination indemnity or an early retirement benefit, as appropriate, would be paid to any staff member who left the service of UNRWA after 1 November 1994.

On 30 August 1994, the Applicant wrote to the Chief, Personnel Services Division, asking him to extend the notice period of his return to duty from 1 September 1994 to 9 September 1994. The Chief of the Personnel Services Division approved that request on the same date. On 9 September 1994, the Applicant wrote to the UNRWA Director of Personnel, requesting "an administrative review of [his] case with a view to extending the period of [his] leave without pay for another six months or granting [him] a compensation payment" in case of separation from the Agency. In a reply dated 12 September 1994, the Chief of the Personnel Services Division informed the Applicant as follows:

> "... I confirm that your resignation has been accepted under paragraph 2 of staff rule 109.6, with effect from the close of business on 30 September 1994. Such entitlements as are due to you on separation will be notified to you by personnel action form ..."

On 16 September 1994, the Director of Administration and Human Resources informed the Applicant that, as he had not advised the Administration within the deadline of his intention to return to UNRWA, his services would end in accordance with the written agreements between him and the Administration. The Director rejected the Applicant's request for an extension of his leave and, with regard to his request for compensation,

informed him that he would be treated in accordance with standing rules and regulations under Area staff rule 109.6 on resignation.

The Applicant left the service on 30 September 1994.

On 13 October 1994, the Applicant wrote to the Director of Administration and Human Resources, asking the latter to review his decision of 16 September 1994 and to authorize him to submit an application directly to the Administrative Tribunal.

On 16 November 1994, the Applicant filed an appeal with the Joint Appeals Board. In a letter dated 13 February 1995, however, the Director of Administration and Human Resources advised the Applicant that his case had been reviewed and that it had been decided that he could submit an application directly to the Administrative Tribunal.

On 10 May 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are as follows:

1. The Respondent violated the principle of good faith with which any international organization must comply in its relations with its staff.

2. The contested decision is illegal, on the ground that the Applicant's consent was vitiated. The Applicant never intended to resign.

3. The Respondent committed a distortion of procedures. The Respondent took advantage of the Applicant's request for leave without pay in order to get rid of him on the least costly terms.

4. The contested decision violates the principle of equality.

Whereas the Respondent's principal contentions are as follows:

1. The contested decision is neither contrary to the principle of good faith nor a distortion of procedures. The Respondent complied with the applicable rules and principles, including the principle of equality.

2. The Applicant's consent was not vitiated.

The Tribunal, having deliberated from 1 to 21 November 1996, now pronounces the following judgement:

I. The Tribunal is called upon to determine whether the Applicant could legitimately be considered as having resigned following the period of leave without pay which had been granted to him by UNRWA for six months with effect from 1 April 1994, or whether, on the contrary, UNRWA abusively deprived him of the indemnity which he would have received if he had been dismissed rather than being considered as having resigned.

II. The letter dated 21 February 1994, in which the UNRWA Director of Administration and Human Resources informed the Applicant that his request for leave without pay had been approved, stated that his resignation would be given effect following such leave if he did not advise the Agency before 1 September 1994 of his intention to return to duty. A copy of this letter, duly signed by the Applicant, was returned by him to the Administration.

III. The period in which the Applicant was to serve notice of his intention to return to duty having been extended by nine days until 9 September 1994, the Applicant on that date requested a review of his case, with a view to obtaining either a further period of leave without pay for six months or a termination indemnity. Nevertheless, as the Applicant had failed to declare his intention to return to duty, in accordance with the letter dated 21 February 1994, the Chief of the UNRWA Personnel Division informed the Applicant that his resignation had been accepted in accordance with paragraph 2 of staff rule 109.6, with effect from 30 September 1994. This action was consistent with the letter dated 21 February 1994. The Administration erred, however, in resorting to the tacit resignation procedure, which is incompatible with UNRWA staff rule 109.6.

IV. UNRWA staff rule 109.6 provides that:

> "A staff member resigns who gives to the Agency a written notice of resignation ... A resignation as here defined is always initiated by a staff member."

These terms, which are analogous to those of United Nations staff rule 109.2, tend to rule out the automatic or tacit resignation procedure triggered by non-compliance with a pre-established requirement. The judicial practice of the Tribunal reflects the same view (Judgement No. 742, *Manson*, para. IX).

V. In addition, the good faith shown by the Administration in handling the Applicant's case is open to doubt. The letter dated 21 February 1994 was transmitted to him at a time when the Administration was preparing to compensate staff members who, for various reasons, did not wish to move to Gaza. It is likely that such was the case in respect of the Applicant, who had acquired Austrian nationality, and that his purpose in requesting six months' leave without pay was to seek a new post in another international organization. Therefore, in view of the Applicant's good and loyal service since 1974, the Administration should have terminated his employment through the dismissal process, accompanied by the indemnity provided for in the Staff Rules, rather than involving him in a process leading to his separation without compensation. In this regard, the Tribunal considers the Administration's conduct to have been wrongful.

VI. The Tribunal orders UNRWA to pay to the Applicant the termination indemnities to which he would have been entitled under staff rule 109.9.

VII. The Tribunal rejects all other pleas of the Applicant, including his claim for expenses.

(Signatures)

Hubert THIERRY
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary